

Supplemental Letter of Findings: 04-20130292
Gross Retail Tax
For the Years 2009 and 2012

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ISSUE

I. Automobile Purchases – Gross Retail Tax.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-4-1(b); IC § 6-2.5-4-1(c); IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); [45 IAC 2.2-3-4](#).

Taxpayers argue they do not owe sales/use tax on the purchase of two automobiles.

STATEMENT OF FACTS

Taxpayers are Indiana residents who purchased two automobiles during 2009 and 2012. The Department of Revenue ("Department") assessed sales/use tax on the purchase price of each vehicle. Taxpayers disagreed with the assessments and submitted a protest to that effect. An administrative hearing was scheduled in order to provide Taxpayers the opportunity to fully explain the basis for their protest. Taxpayers chose not to take part in the hearing but requested that their written documentation be reviewed and form the basis of the decision. A Letter of Findings was issued denying the protest, but Taxpayers disagreed with the decision and requested a rehearing. The rehearing was granted and an administrative hearing was conducted. Taxpayers again chose not to participate in the hearing but obtained the services of a representative to represent their interests. The representative took part in the administrative hearing, provided a few relevant documents, and explained the basis for the protest. This Supplemental Letter of Findings results.

I. Automobile Purchases – Gross Retail Tax.

DISCUSSION

Taxpayers initially argued that imposition of the tax was erroneous because the assessment was an "abuse[] of due process," that the assessment violated the sovereign authority of both Louisiana and Montana, and the assessment was void because of an "insufficiency of evidence." In addition, Taxpayers argued that ownership of the cars was held by Taxpayers' Montana based Limited Liability Company for which Taxpayers are, or were, merely the LLC's managers.

Taxpayers now reframe their argument stating that they previously paid sales and/or use tax on the two vehicles.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Id.*; USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466, 468–69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. Rhoades, 774 N.E.2d at 1048. A taxable retail transaction occurs when: (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), (c); IC § 6-2.5-3-2(a).

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. As explained in [45 IAC 2.2-3-4](#):

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross

retail tax has been collected at the point of purchase.

In reviewing Taxpayers' protest, it is appropriate to point out that it is the Taxpayers' responsibility to establish that the tax assessments are incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayers purchased two cars. Taxpayers purchased one car in 2009 and one car in 2012. In the case of the 2009 transaction, Taxpayers have provided information establishing that the purchaser bought the car from a dealership located in Louisiana, were residing in Louisiana at the time the transaction occurred, and paid the appropriate amount of Louisiana tax.

Similarly, Taxpayers provided additional information related to the 2012 transaction. In this case, Taxpayers provided information establishing the appropriate amount of sales/use tax was paid at the time the vehicle was registered with the Indiana Bureau of Motor Vehicles.

Taxpayers initially disagreed with the use tax assessments pointing to the purported ownership of the vehicles by a Montana LLC, that the tax assessments were "defamatory," that the assessments violated "due process," that the transactions were governed by the "Dormant Interstate Commerce clause," that the assessments were unconstitutional, that the assessments violated principles of state sovereignty, that Taxpayers were merely the "resident agents" of the Montana LLC, that the assessments represented the "intimidating tactics of 'straw persons,'" that the assessments were ethically indefensible, and that the transactions violated numerous other legal, ethical, and moral principles.

The Department expended considerable resources sorting through approximately 80 pages of single-spaced typewritten documents submitted by Taxpayers when a simple explanation and few relevant documents could have resolved the disputed assessments simply, easily, and quickly. Nonetheless, Taxpayer is ultimately correct that the Indiana assessments should be abated.

FINDING

Taxpayer's protest is sustained.

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